



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

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CERTIFIED MAIL 7004 2510 0004 8289 8561
RETURN RECEIPT REQUESTED

Jim Hughes
Cheyenne Board of Public Utilities
P.O. Box 1469
Cheyenne, Wyoming 82003

Re: Order for Compliance under section
309(a) of the Clean Water Act

Dear Mr. Hughes:

Enclosed is a United States Environmental Protection Agency Region 8 (EPA) Order for Compliance ("Order") issued to the Cheyenne Board of Public Utilities (BOPU) for alleged violations of its Publicly Owned Treatment Works (POTW) Pretreatment Program. The Order specifies the nature of the violations under the Clean Water Act (Act), as amended, 33 U.S.C. § 1251, *et seq.* The authority for such action is provided to EPA under section 309(a)(3) of the Act, 33 U.S.C. § 1319(a)(3).

The Order describes the actions necessary in order for the Cheyenne BOPU to achieve compliance with the Act. Furthermore, the Order requires you to notify EPA in writing within ten (10) days whether you intend to comply with the Order.

The Act requires the Administrator of EPA to take all appropriate enforcement actions necessary to secure prompt compliance with the statute and any orders issued there under. Section 309 of the Act provides a variety of possible enforcement actions, including the filing of a civil or criminal action (33 U.S.C. §§ 1319(b), (c), (d), and (g)). Section 508 of the Act, 33 U.S.C. § 1368, allows for debarment from federal contracts and/or loans for any noncompliance with the Act or an order. Please be advised that the issuance of this Order does not preclude the initiation of administrative penalty proceedings or civil or criminal action in U.S. District Court under sections 309(g), (b), (d) and (c) of the Act for the violations cited herein. Please review the Order carefully. Failure to comply with the requirements of the Order shall constitute a violation of the Order.

Concurrent with this Order, and to assist the Cheyenne BOPU meet the demands of its industrial users, EPA has determined that the Cheyenne BOPU may immediately begin, at its discretion, to implement the recalculated maximum allowable industrial load (MAIL) for selenium of 0.583 pounds/day pending EPA approval.

In addition, the Cheyenne BOPU may consider an increase to the MAIL of 0.1 pounds selenium if the following conditions are met: (1) three consecutive days of effluent testing demonstrates that the water quality standard for selenium is not being exceeded; and (2) if the Cheyenne BOPU determines that the additional loading is resulting in an exceedence of the water quality standard for selenium, the discharge of selenium from the POTW must be reduced by reducing its MAIL until in-stream water quality standards for selenium are consistently met. The Cheyenne BOPU must sample and analyze the influent and effluent daily for selenium at both the Crow Creek and Dry Creek wastewater treatment facilities if it chooses to allocate the higher selenium limit (above the recalculated MAIL). The Cheyenne BOPU may, at its discretion continue to iteratively increase the selenium allocation by 0.1 pounds/day as described above, provided that water quality standards and other environmental standards continue to be met as demonstrated by analytical results.

Permission for the additional allocation of selenium to industrial users above the approved local limit shall terminate upon written notice from EPA.

If you have any questions regarding this letter, the enclosed Order, or any other matters pertinent to the Cheyenne Board of Public Utilities' compliance with the CWA, the most knowledgeable people on my staff regarding these matters are Amy Swanson, Enforcement Attorney, at (303) 312-6906, and Colleen Gillespie, NPDES Enforcement Unit, at (303) 312-6047.

Sincerely,

for Eddie A. Sierra
for Carol Rushin
Assistant Regional Administrator
Office of Enforcement, Compliance
and Environmental Justice

Enclosures

cc: Ken Johnson, BOPU
Brian Lovett, WDEQ (w/encl.)

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8**

IN THE MATTER OF:

The City of Cheyenne
Board of Public Utilities
Cheyenne, Wyoming 82003

NPDES Permit Nos. WY-0022934 &
WY-0022381

Respondent.

) **ORDER FOR COMPLIANCE**

)
) Proceeding under Section 309(a)
) of the Clean Water Act

)
) Docket No. CWA-08-2005-0047

STATUTORY AUTHORITY

This Order for Compliance (Order) is issued pursuant to section 309(a)(3) of the Clean Water Act (Act), 33 U.S.C. § 1319(a)(3), which authorizes the Administrator of the United States Environmental Protection Agency (EPA) to issue an order requiring compliance by a person found to be in violation of sections 301, 302, 306, 307, 308, 318, or 402 of the Act, or in violation of any permit condition or limitation implementing any such sections of the Act. This authority has been delegated to the undersigned official.

This Order is also issued pursuant to section 308(a) of the Clean Water Act, 33 U.S.C. § 1318(a), which authorizes the Administrator of the United States Environmental Protection Agency (EPA) to require reports necessary to determine compliance. This authority has been delegated to the undersigned official.

Section 307(b) of the Act, 33 U.S.C. § 1317(b), directs the Administrator of the EPA to establish Pretreatment Standards applicable to indirect discharges to control those pollutants that are determined not to be susceptible to treatment by a Publicly Owned Treatment Works (POTW) or which would interfere with the operation of such POTW; these standards are promulgated at 40 C.F.R. part 403.

FINDINGS OF FACT

1. The Cheyenne Board of Public Utilities (BOPU) is a "municipality" as defined by section 502(4) of the Act, 33 U.S.C. § 1362(4).
2. A municipality is a "person" within the meaning of section 502(5) of the Act, 33 U.S.C. § 1362(5), for purposes of federal enforcement.
3. The Cheyenne BOPU owns and operates a POTW known as the Dry Creek wastewater treatment facility, located at 8911 Campstool Road Cheyenne, Wyoming. The Dry Creek wastewater treatment facility discharges treated wastewater into Crow Creek and has a design capacity of 7.0 million gallons per day (MGD) and an average daily flow of 5.4 MGD. National Pollutant Discharge Elimination System (NPDES) permit number WY-0022934, issued by the State of Wyoming on May 7, 2003, and effective on June 1, 2003, authorizes the Cheyenne BOPU to discharge in accordance with section 402 of the Act, 33 U.S.C. § 1342.
4. The Cheyenne BOPU owns and operates a POTW known as the Crow Creek wastewater treatment facility, located at 4403 Livingston Street Cheyenne, Wyoming. The Crow Creek wastewater treatment facility discharges treated wastewater into Crow Creek and has a design capacity of 4.5 MGD and an average daily flow of 3.2 MGD. NPDES permit number WY-0022381, issued by the State of Wyoming on May 7, 2003, and effective on June 1, 2003 authorizes the Cheyenne BOPU to discharge in accordance with section 402 of the Act, 33 U.S.C. § 1342.

5. Crow Creek is an interstate water and a tributary of the South Platte River and "water of the United States" within the meaning of 40 C.F.R. § 122.2 and, therefore, a "navigable water" within the meaning of section 502(7) of the Act, 33 U.S.C. § 1362(7).
6. Wastewater is a "pollutant" within the meaning of section 502(6) of the Act, 33 U.S.C. § 1362 (6).
7. The General Pretreatment Regulations set forth at 40 C.F.R. § 403.8(a) provide that "[A]ny POTW (or combination of POTWs operated by the same authority) with a total design flow greater than five (5) MGD and receiving from industrial users pollutants which Pass Through or Interfere with the operation of the POTW or are otherwise subject to Pretreatment Standards will be required to establish a POTW Pretreatment Program" unless the NPDES State otherwise assumes the responsibility.
8. At all times relevant to this Order, EPA has been and continues to be the "Approval Authority" within the meaning of 40 C.F.R. § 403.3(c).
9. Any such POTW Pretreatment Program must receive EPA approval pursuant to 40 C.F.R. § 403.8(b). Upon its approval by EPA, the responsibility to apply and enforce the National Pretreatment Standards transfers to the POTW.
10. EPA approved the Cheyenne BOPU's POTW Pretreatment Program on March 28, 1986, at which time the Cheyenne BOPU became the "Control Authority" within the meaning of 40 C.F.R. § 403.12(a).

11. Pursuant to 40 C.F.R. § 403.8(f)(5) of the Pretreatment Program Requirements, "The POTW shall develop and implement an enforcement response plan containing detailed procedures indicating how a POTW will investigate and respond to instances of industrial user noncompliance."
12. EPA approved the Cheyenne BOPU's document "City of Cheyenne, Wyoming Industrial Pretreatment Program. A program revision," dated March 15, 1995. The current enforcement response plan (ERP) was included in this program revision.
13. The Cheyenne BOPU prepared and submitted to EPA the Pretreatment Program Annual Report for 2004.
14. Frontier Refining, Inc., is a petroleum refining company (standard industrial classification 2911).
15. Frontier Refining, Inc. began operating after December 21, 1979 and is a New Source, subject to the categorical pretreatment standards at 40 C.F.R. § 419.27.
16. Frontier Refining, Inc. has been discharging process wastewater to the Crow Creek wastewater treatment facility since at least August 2004.
17. Frontier Refining, Inc., is an "Industrial User" within the meaning of 40 C.F.R. § 403.3(h), and a "Significant Industrial User" as defined at 40 C.F.R. 403.3(t).

18. Pursuant to 40 C.F.R. 403.8(f)(2)(vii), an Industrial User is in significant noncompliance (SNC) if its violation meets one or more of the listed criteria including, but not limited to, chronic violations of wastewater discharge limits; technical review criteria violations; any other violation of a pretreatment effluent limit that the Control Authority determines has caused interference or pass through; any discharge of a pollutant that caused imminent endangerment to human health, welfare, or the environment or results in the POTW's exercise of its emergency authority; failure to meet a compliance milestone contained in a local control mechanism or enforcement order within 90 days after the schedule date; failure to provide required reports such as baseline monitoring reports and 90-day compliance reports within 30 days after the due date; failure to accurately report noncompliance; and any other violation(s) which the Control Authority determines will adversely affect the operation or implementation of the local pretreatment program.
19. EPA conducted a Pretreatment Compliance Inspection (Inspection) of the Cheyenne BOPU pretreatment program on June 7, 2005. The Inspection included a physical inspection of the facility, file review and personnel interviews.

VIOLATIONS

Count I

(Failure to Enforce Reporting Requirements and Effluent Limits)

20. Pursuant to 40 C.F.R. § 403.8(f)(5), the ERP and the Cheyenne BOPU's NPDES permits (Part III, section B(1)(e) of NPDES permits WY-0022934 and WY0022381, respectively), the Cheyenne BOPU is required to enforce all applicable pretreatment standards and requirements and obtain remedies for noncompliance by any Industrial User.

21. 40 C.F.R. § 403.12(b) requires that at least 90 days prior to beginning a discharge, New Sources, and sources that become Industrial Users subsequent to the promulgation of an applicable categorical standard shall be required to submit to the Control Authority a report containing the information listed in paragraphs (b)(1)-(5) of section 403.12. This report is known as a baseline monitoring report or "BMR". New Sources are required to include in this report information on the method of pretreatment the source intends to use to meet applicable pretreatment standards.
22. Frontier Refining, Inc., an Industrial User, did not submit a BMR to the Cheyenne BOPU at least 90 days prior to beginning a discharge. The BMR for Frontier Refining, Inc., was required to be submitted on or before May 19, 2004. Frontier Refining, Inc. is in SNC for submitting a required report more than 30 days late. Cheyenne BOPU's enforcement response plan states that the response for this violation is an administrative order with fines.
23. The Cheyenne BOPU did not initiate an enforcement response for Frontier Refining, Inc.'s failure to submit a BMR.
24. 40 C.F.R. § 403.12(d) requires that a report on compliance with categorical pretreatment standards be submitted to the Control Authority within 90 days following the date for final compliance with applicable categorical Pretreatment Standards or in the case of a New Source following commencement of the introduction of wastewater into the POTW, any Industrial User subject to Pretreatment Standards and Requirements shall submit to the Control Authority a report containing the information described in paragraphs (b)(4)-(6) of section 403.12.

25. Frontier Refining, Inc. did not submit a compliance report to the Cheyenne BOPU within 90 days after beginning to discharge into the POTW. The compliance report was required to be submitted on or before December 15, 2005. Frontier Refining Inc is in SNC for submitting a required report more than 30 days late. Cheyenne BOPU's enforcement response plan states that the response for this violation is an administrative order with fines.
26. The Cheyenne BOPU did not initiate an enforcement response for Frontier Refining, Inc.'s, failure to submit the required compliance report.
27. Based on the 2004 Pretreatment Program Annual report for the Crow Creek facility and EPA's Inspection, the Cheyenne BOPU determined that Frontier Refining, Inc. was in SNC for chronic violations of its local limit for selenium 2004. The selenium violations are outlined in Appendix A.
28. The Cheyenne BOPU ERP provides that the appropriate enforcement action for SNC is an administrative order with fines.
29. The Cheyenne BOPU issued Frontier Refining, Inc., letters of violation on March 25, 2005 and May 27, 2005 rather than issue an administrative order for the SNC selenium violations in 2004.
30. The Cheyenne BOPU's failure to initiate appropriate enforcement actions for Frontier Refining, Inc.'s, reporting and effluent limit violations constitutes violations of the Cheyenne BOPU ERP, 40 C.F.R. § 403.8(f)(5), Part III, section B(1)(e) of NPDES permits WY-0022934 and WY0022381, and section 309(a)(3) of the Act, 33 U.S.C. § 1319(a)(3).

Count II
(Failure to Provide Public Notice)

31. Pursuant to 40 C.F.R. § 403.8(f)(2)(vii), the Cheyenne BOPU is required to publish annually, in the largest daily newspaper in the municipality, a list of all industrial users which were in SNC with applicable pretreatment standards in the previous twelve months.
32. Frontier Refining, Inc. was in SNC for violations of the selenium limit in 2004, and for failing to submit the BMR and compliance report referenced in Count I.
33. The Cheyenne BOPU did not publish Frontier Refining, Inc. in a newspaper for SNC in 2004.
34. The Cheyenne BOPU's failure to publish Frontier Refining, Inc.'s SNC in 2004, constitutes a violation of 40 C.F.R. § 403.8(f)(2)(vii) and section 309(a)(3) of the Act, 33 U.S.C. § 1319(a)(3).

ORDER

The Cheyenne BOPU is ordered to perform the following actions:

35. Upon receipt of this Order, the Cheyenne BOPU shall immediately take all action necessary to properly enforce its approved Pretreatment Program in accordance with the approved ERP.
36. Within ten (10) days of receipt of this Order, the Cheyenne BOPU shall give written notice to EPA of its intent to comply with the requirements of this Order.

37. Within thirty (30) days, the Cheyenne BOPU shall submit a report to EPA describing the actions proposed and/or taken to prevent all pretreatment violations cited by this Order from recurring. This report shall include specific dates for the actions to be taken and references to the violations prompting the actions.
38. Within thirty (30) days of receipt of this Order, the Cheyenne BOPU shall provide a copy to EPA of the newspaper publishing Frontier Refining, Inc., in SNC for 2004.
39. Within fourteen (14) days after the end of each calendar quarter the Cheyenne BOPU shall submit to EPA a summary of all Industrial User violations identified during the previous quarter, and the Cheyenne BOPU's enforcement response planned or taken. This reporting requirement shall continue until EPA provides written notice that it may cease.
40. Upon written notice by EPA, the Cheyenne BOPU will submit an itemized list of all costs incurred to implement the actions specified in paragraphs 35-38.
41. All written notices and reports required by this Order shall be sent to the following addressee:
- Colleen Gillespie (8ENF-W-NP)
U.S. EPA Region 8
999 18th Street, Suite 300
Denver, Colorado 80202-2466
42. Any failure to comply with the requirements of this Order shall constitute a violation of said Order and may subject the Cheyenne BOPU to penalties as provided under the section 309 of the Act, 33 U.S.C. § 1319.

43. This Order does not constitute a waiver or modification of the terms and conditions of the Cheyenne BOPU's NPDES permits which remains in full force and effect.

44. This Order does not constitute a waiver or election by EPA to forego any civil or criminal action to seek penalties, fines or other relief as it may deem appropriate under the Act. Be advised that section 309(d) of the Act, 33 U.S.C. § 1319(d), authorizes the imposition of civil penalties of up to \$32,500 per day for each violation of the Act, while section 309(c) of the Act, 33 U.S.C. § 1319(c), authorizes fines and imprisonment for willful or negligent violations of the Act.

45. Nothing in this Order shall be construed to preclude the institution of further action under section 309 of the Act, 33 U.S.C. § 1319, for those violations cited herein or relieve the Cheyenne BOPU from responsibilities, liabilities, or penalties established pursuant to any applicable Federal and/or State law or regulation.

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, REGION 8
Complainant.

Date: SEP - 9 2005

for Eddie Q. Sierra
Carol Rushin
Assistant Regional Administrator
Office of Enforcement, Compliance
and Environmental Justice

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the original and one copy of the ORDER FOR COMPLIANCE was hand-carried to the Regional Hearing Clerk, EPA Region 8, 999 18th Street, Suite 300, Denver, Colorado, and that true copies of the same were sent as follows:

Via hand delivery to:

Honorable Alfred C. Smith
Regional Judicial Officer
U.S. Environmental Protection Agency
999 18th Street, Suite 300 (8RC)
Denver, CO 80202-2466

Via certified mail to:

Jim Hughes
City of Cheyenne
Board of Public Utilities
P.O. Box 1469
Cheyenne, WY 82003

9/9/05

Date

Colleen Gillespie
Judith McTernan

Attachment A

Sample Date	Sample Result (mg/L)	Exceeds Effluent Limit (0.045 mg/L)?	Exceeds Technical Review Criteria?
8/4/04	0.247	Y	Y
8/18/04	0.198	Y	Y
9/1/04	0.2723	Y	Y
9/15/04	0.14	Y	Y
10/6/04	0.366	Y	Y
10/13/04	0.0417	N	N
11/3/04	ND	N	N
11/17/04	0.0247	N	N
1/19/05	0.1887	Y	Y
2/2/05	0.129	Y	Y
2/16/05	0.174	Y	Y
3/2/05	0.32	Y	Y
3/16/05	0.15	Y	Y
3/30/05	0.133	Y	Y
4/13/05	0.2	Y	Y
4/27/05	0.262	Y	Y
5/4/05	0.265	Y	Y
5/18/05	0.281	Y	Y
5/25/05	0.3	Y	Y
6/4/05	0.262	Y	Y
6/18/05	0.249	Y	Y
7/25/05	0.235	Y	Y
7/29/05	0.23	Y	Y
7/6/05	0.218	Y	Y
7/13/05	0.156	Y	Y
7/20/05	0.22	Y	Y
7/27/05	0.22	Y	Y